A disaster declaration related to the New World screwworm, an agency's adjusted approach to "no artificial colors" claims, Florida's investigation into pesticides in bread, and more.

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SPOTLIGHT ON ANIMAL HEALTH & AGRIBUSINESS

Michigan to Enforce Stricter CAFO Permit Standards After Extended Legal Battle

By Caitlin C. Robb

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) is poised to begin enforcing tougher permit standards for concentrated animal feeding operations (CAFOs), aiming to curb nutrient pollution in state waters. CAFOs can generate significant nutrient waste, which can impact water quality if not properly managed.

The move to enforcement follows a lengthy legal battle over EGLE's authority to impose stricter conditions under the federal Clean Water Act. EGLE first revised its National Pollutant Discharge Elimination System general permit for CAFOs

in 2020. Farm groups challenged the changes, but in July 2024, the Michigan Supreme Court upheld EGLE's authority, ruling the conditions are valid permit terms rather than administrative rules. An administrative law judge later adopted this decision, clearing the way for enforcement beginning this year.

Key provisions of Michigan's updated CAFO permit prohibit manure application from January through mid-March to prevent runoff and require buffer zones, stricter phosphorus limits, enhanced reporting, and improved waste storage standards. Noncompliance may result in permit violations, enforcement actions and potential litigation under the Clean Water Act.

Shook's Animal Health and Agribusiness team brings vast experience in litigation and regulatory matters to advocate for those who are passionate about serving in the animal health industry. To learn more about Shook's animal health and agribusiness capabilities, please contact Practice Co-Chairs Joseph H. Blum, Phil Goldberg or John F. Johnson III.

LEGISLATION, REGULATIONS & STANDARDS

FDA Announces Approach to 'No Artificial Colors' Claims, Approves Alternative Food Colors

The U.S. Food and Drug Administration (FDA) will allow companies to claim their products contain "no artificial colors" when the products do not contain petroleum-based colors, a departure from past policy that allowed such claims only when their products had no added color whatsoever. The agency announced that it notified industry of its intent to exercise discretion related to voluntary labeling claims. "We are making it easier for companies to move away from petroleum-based synthetic colors and adopt safer, naturally derived alternatives," U.S. Department of Health and Human Services Secretary Robert F. Kennedy, Jr., said in a statement. FDA also approved beetroot red for color use and the expanded use of spirulina extract, an existing color additive.

Shook Senior Counsel John F. Johnson III noted that the announcement may be merely hype rather than meaningful change. "FDA alleging the claim 'no artificial colors' is misleading when the food contains a colorant such as beet juice, I believe, has appeared in two Warning Letters in the past 25 years—and each time the allegation was a passing remark as compared to FDA's primary concern," he said. "Further, enforcement discretion has less weight than a regulation within the consumer class action context."

State Cultivated Protein Bans Advance

The South Dakota House of Representatives has passed a bill banning lab-grown meat, and the Senate Agriculture and Natural Resources Committee voted to advance the bill to the full Senate. HB 1077 deems cultivated-protein food products as adulterated food. The definition for "cultivated-protein food product" is a food product having one or more sensory attributes that resemble a type of tissue originating from an agricultural food animal but that is derived from manufacturing cells, including processes in which stem cells that were initially isolated from an agricultural food animal are grown in vitro and may be manipulated as part of a manufacturing process.

In Texas, a federal court has denied a bid to enjoin the state's lab-grown meat ban—which took effect September 1, 2025—but has allowed a portion of the case to proceed. *Wild Type v. Shuford*, No. 25-1408 (W.D. Tex., filed January 30, 2026). The court trimmed the lawsuit, dismissing claims against a county attorney and plaintiff UPSIDE's preemption claim under the Poultry Product Inspection Act, but found that the plaintiffs' claims against state officials are not barred and the plaintiffs may bring Dormant Commerce Clause claims against them under 42 U.S.C. § 1983.

GAO Recommends FDA Take Steps to Complete FSMA Requirements

The U.S. Government Accountability Office (GAO) has issued a study reviewing the Food and Drug Administration's (FDA's) efforts to implement the Food Safety Modernization Act (FSMA), recommending the agency take seven steps to complete requirements included in the law. GAO was asked to review FDA's efforts to implement FSMA's preventive framework; GAO said it found the agency has completed most but not all of the requirements of the law. Among the recommendations are that FDA's commissioner should ensure that the Human Foods Program (HFP):

- Establishes a time frame for finalizing the agency's guidance for hazard analysis and preventive controls for human food and issues the guidance as required by law;
- Establishes a time frame for finalizing the agency's guidance to protect against the intentional adulteration of food and issues the guidance;
- Publishes a report on the progress in implementing a national food emergency response laboratory network;
- Establishes milestones and timelines for publishing future reports on progress in implementing a national food emergency response laboratory network and publishes the reports as required;
- Establishes milestones and timelines for updating the agency's good agricultural practices for fruits and vegetables and publishes them;
- Develops a plan with milestones and timelines for establishing a product tracing system to enhance FDA's existing foodborne outbreak response processes, and establishes the system; and
- Develops and implements, along with the Center for Veterinary Medicine, a performance management process to assess the results of FDA's rules and their contribution to the prevention of foodborne illness.

Whole Milk Bill Signed Into Law

Pres. Donald Trump has signed the Whole Milk for Healthy Kids Act of 2025 (S. 222), modifying U.S. Department of Agriculture (USDA) regulations requiring schools participating in the National School Lunch Program to provide fat-free

or low-fat milk. The law allows schools to offer whole, reduced-fat, low-fat and fat-free milk options. “This bipartisan solution to school meals alongside the newly released Dietary Guidelines for Americans reinforces what families already know: nutrient dense foods like whole milk are an important part of a healthy diet,” USDA Sec. Brooke L. Rollins said.

Texas Gov. Issues Disaster Declaration for New World Screwworm

Texas Gov. Greg Abbott has issued a statewide disaster declaration to combat the potential spread of the New World screwworm (NWS). In a statement, he said that while the NWS is not yet present in Texas or the United States, “its northward spread from Mexico toward the U.S. southern border poses a serious threat to Texas' livestock industry and its wildlife.” He said issuing the disaster declaration allows the Texas New World Screwworm Response Team to use all state government prevention and response resources necessary.

The U.S. Department of Agriculture announced a shift in its sterile fly dispersal efforts to stop the northern spread of the invasive insect, reinforcing coverage along the U.S.-Mexico border. USDA also has reported an incident of NWS within the United States at a USDA import facility in Florida. State officials emphasized in a news release that the case involved an imported horse from Argentina.

FDA To Reassess Safety of BHA in Food, as Food Contact Substance

The U.S. Food and Drug Administration (FDA) has launched a comprehensive reassessment of butylated hydroxyanisole (BHA), a chemical preservative used in food. The reassessment will consider whether BHA is safe for use in food and as a food contact substance based on the latest scientific information. FDA said

the move is part of its larger efforts to proactively review chemical additives in the food supply; it noted that it identified BHA as a top priority for review in 2025. “This reassessment marks the end of the ‘trust us’ era in food safety,” U.S. Health and Human Services Sec. Robert F. Kennedy, Jr., said in a statement. “If BHA cannot meet today’s gold-standard science for its current uses, we will remove it from the food supply and continue cleaning up food chemicals—starting where children face the greatest exposure.”

HHS, USDA Releases New Dietary Guidelines

The U.S. Department of Health and Human Services (HHS) and Department of Agriculture (USDA) have released the Dietary Guidelines for Americans, 2025-2030. The guidelines recommend prioritizing protein-rich foods at every meal and emphasize consuming dairy, fruits and vegetables, whole grains and healthy fats. They also recommend avoiding highly processed packaged, prepared, ready-to-eat or other foods that are salty or sweet, instead prioritizing nutrient-dense foods and home-prepared meals. In a joint statement, HHS Sec. Robert F. Kennedy, Jr., and USDA Sec. Brooke Rollins said their agencies are “are putting real food back at the center of the American diet.”

Florida Issues Report Finding Glyphosate in Bread

Six of eight bread products tested by the Florida Department of Health contained glyphosate, the department reported as part of its Healthy Florida First initiative. In a news release, the state said the study results released “are intended to give families additional insight into everyday foods and support informed decision-making.” As part of the initiative, the state previously tested candy and infant formula.

FDA Seeks Comments on Gluten Disclosure Petition

The U.S. Food and Drug Administration (FDA) will accept comments on a 2023 citizen petition filed by Celiac Journey requesting that the agency require "all ingredients with gluten be listed by name in the ingredient list" as well as cross-contact controls with gluten-containing grains (GCGs). "Celiac Journey's petition, in part, asks that FDA: (1) issue a rule to require that all ingredients with gluten be listed by name in the ingredient lists of all foods, and (2) add gluten to the list of allergens" in the agency's Compliance Policy Guide, the announcement states. "The petition also makes additional requests, such as asking that oats be included as GCGs because they often contain gluten due to cross-contact." Comments "about the issues presented in Celiac Journey's petition and on specific questions related to these issues" will be accepted until March 23, 2026.

LITIGATION

Consumer Challenges Smartfood "No Artificial Ingredients" Claim Due to Maltodextrin Content

A plaintiff has alleged PepsiCo Inc. and Smartfoods Inc. mislead consumers by marketing SmartFood white cheddar popcorn as containing "no artificial colors or flavors" and "no artificial preservatives" on the grounds that the product ingredient maltodextrin is a synthetic flavoring and preservative. *Flexer v. Smartfoods Inc.*, No. 26-0475 (E.D.N.Y., filed January 28, 2026).

The consumer alleges that the defendants use maltodextrin as both a preservative and a flavor for the product, thereby violating their marketing claims. "Maltodextrin is not found in nature," the complaint asserts. "To produce

maltodextrin, acids, enzymes, or acids and enzymes are applied in sequence to a starch slurry to induce partial hydrolysis (saccharification). In other words, the acids or enzymes convert or depolymerize starch to glucose or maltose molecules. Once maltose content is high enough, the acids or enzymes are neutralized, removed or deactivated, and the resulting product is then refined, purified and concentrated. Synthetic chemicals are often used to extract and purify the enzymes used to produce maltodextrin." The plaintiff alleges that rules proposed in 2007 by the U.S. Food and Drug Administration "recognize that maltodextrin is a synthetic ingredient."

SCIENTIFIC / TECHNICAL ITEMS

Food Preservative Intake May Increase Cancer Risk, Researchers Say

A study in *The BMJ* has purportedly found that higher intake of food preservatives is associated with a "modestly increased" risk of cancer. Hasenböhler et al, "Intake of food additive preservatives and incidence of cancer: results from the NutriNet-Santé prospective cohort," *BMJ* (January 7, 2026). Reviewing the medical and dietary records of 105,260 participants taken over 7.5 years, the researchers tracked consumption of 17 preservatives, including citric acid, lecithins, total sulfites, ascorbic acid, sodium nitrite, potassium sorbate, sodium erythorbate, sodium ascorbate, potassium metabisulfite, and potassium nitrate.

Eleven of the preservatives had no measurable correlation to cancer rates, the study indicated. The researchers said they found correlated increased risks of cancer among those who consumed higher levels of (i) potassium sorbate (14% increased risk of overall cancer and 26% increased risk of breast cancer); (ii) total sulfites (12% increased risk of overall cancer); (iii) sodium nitrite (32% increased risk of prostate cancer); (iv) potassium nitrate (13% increased risk of overall cancer and 12% increased risk of breast cancer); (v) total acetates (15%

increased risk of overall cancer and 25% increased risk of breast cancer); and (vi) acetic acid (12% increased risk of overall cancer). Because the study was observational, the researchers note, they declined to draw firm conclusions about cause and effect or rule out the possibility that other unmeasured factors may have influenced the results.

More to Explore

- Shook Partner **Naoki Kaneko** speaks at the **Consumer Brands CPG Forum** on February 19, 2026, presenting two sessions: "Litigation: Caveats on Small Font for Big Impact—Legal Strategies in Disclaimers, Warnings and Arbitration" and "Using Remedial Market Actions to Defend Litigation or Favorably Resolve."

- Shook **welcomed** two nationally recognized leaders in litigation strategy, discovery and emerging technology to the firm's **Complex Litigation Strategic Counseling Practice**. Partner **Jamie Brown**, in Shook's **New York City** location, and Partner **John Rosenthal**, of the firm's **Washington, D.C.**, office, bring more than 50 years of combined experience litigating complex matters. “Amid still surging demand in mass tort litigation, Shook, Hardy & Bacon has added two partners with expertise in discovery and emerging technology,” wrote ***The American Lawyer***.

- The previous issue of the ***Food and Beverage Litigation and Regulatory Update*** focused on a lawsuit aiming to enjoin Texas' food labeling law, a study purportedly finding no risk for light alcohol consumption, the passage of a federal bill allowing whole milk in schools, and more.

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As the food and beverage industries become more complex, they require effective legal representation that can quickly evaluate potential liability and craft the most appropriate responses to suspected product adulteration, alleged foodborne outbreaks or environmental contamination claims. For decades, manufacturers, distributors and retailers at every link in the food chain have come to Shook, Hardy & Bacon to partner with a legal team that understands the issues they face in today's evolving food production industry. Shook attorneys work with some of the world's largest food and beverage companies to establish preventative measures, conduct internal audits, develop public relations strategies, and advance tort reform initiatives. Learn more about Shook at www.shb.com

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